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IN THE
COURT OF APPEALS OF INDIANA

RANDY S. JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0611-CR-664
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0512-MR-219976

October 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Randy Johnson appeals his conviction and sentence for murder.[1]

We affirm.

ISSUES

1. Whether the State presented sufficient evidence to convict Johnson.

2. Whether the trial court erred in sentencing Johnson.

FACTS

In July of 2003, Melissa Handlon[2] and Candice Hoffman shared an apartment in a four-unit building, located on Villa Avenue in Indianapolis. The building consisted of two apartments on the second level and two on the first level. Handlon and Hoffman lived in one of the upstairs apartments, and Johnson lived in the other upstairs apartment. The apartments had windows at the front of the building, with a porch roof directly under the windows, spanning the length of the building's façade. Before the events of this case, the screen covering the front window of Handlon and Hoffman's apartment "was ripped a little bit but it was not ripped to where someone could get in or out of that window or where you could even tell that it was ripped." (Tr. 219). The only entrance to the apartment shared by Handlon and Hoffman was at the top of an exterior staircase.

Prior to July 29, 2003, Hoffman had never met Johnson. Late that afternoon, Handlon and Hoffman left their apartment to buy a belt for their vacuum cleaner. They

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[1] Ind. Code § 35-42-1-1.

[2] Handlon's first name is spelled "Malissa" in the trial transcript and probable cause affidavit and "Melissa" in the parties' briefs and other portions of the record.

met Johnson outside the apartment and started talking with him. Johnson volunteered to fix the vacuum cleaner and went to Handlon and Hoffman's apartment, where he fixed the vacuum. While Johnson was at their apartment, Handlon and Hoffman discussed walking to the liquor store. Johnson offered to give them a ride to the liquor store if they would buy him some beer. Handlon and Hoffman agreed. At some point, Johnson let Handlon and Hoffman use the telephone in his apartment since they did not have a phone. Johnson spent some time at Handlon and Hoffman's apartment, where the three talked and drank alcohol. Handlon, Hoffman and Johnson continued to socialize during the evening, going back and forth between their apartments. At approximately 12:45 a.m. on July 30, 2003, Hoffman left the apartment, locking the door after she left. Handlon remained home.

Around 6:00 a.m. on July 30, 2003, when Hoffman returned home, she realized that the door to the apartment was unlocked, despite having locked it when she left the night before. It did not, however, appear as if the door had been forced open. After entering the apartment, Hoffman noticed Handlon's shoes in the hallway and her purse in the living room, even though she "was suppose[d] to be at work." (Tr. 206). When Hoffman entered the bedroom, she discovered Handlon, lying on the bed. Hoffman then "ran outside for somebody to call the police." (Tr. 207).

Officer Henry Castor of the Indianapolis Police Department arrived at Handlon and Hoffman's apartment shortly after receiving a dispatch about a "possible D.O.A." or "[d]ead on arrival" and secured the scene. (Tr. 45). While securing the apartment and its rooms, Officer Castor observed a pair of men's underwear in the bedroom.

Detectives Robert Flack and Marcus Kennedy responded to the scene after receiving a report of a homicide. During the investigation on July 30, 2003, Detective Flack spoke with Johnson, whom officers considered either a "potential witness or maybe someone having some information," since he lived next door to the crime scene. (Tr. 101). Johnson informed Detective Flack that during the evening of July 29, 2003, he met Handlon and Hoffman outside of the apartment building, and they asked him to take them to the liquor store, which he did. Johnson told Detective Flack that after the three returned home, Handlon and Hoffman visited his apartment, where they ate and talked on the phone. Johnson denied ever being in Handlon and Hoffman's apartment.

Detective Flack again interviewed Johnson approximately one hour later because Detective Flack "felt like [Johnson] wasn't being completely honest with some of the answers he had given . . . earlier." (Tr. 104). During the second interview, Johnson admitted to having been in Handlon and Hoffman's apartment during the evening of July 29, 2003. Johnson told Detective Flack that he left the women's apartment at approximately 11:00 p.m.

Hoffman remained at the apartment to assist with the police's investigation—"[t]o make sure that nothing was missing" or "out of place . . . ." (Tr. 221, 222). Hoffman informed the police that the window screen had a larger rip than before. Detective Kennedy noted that the screen was ripped enough to "allow full access" through the window. (Tr. 442).

Doug Boxler, a crime scene specialist with the Indianapolis-Marion County Forensic Service Agency (the "Crime Lab"), collected several items from the apartment,

including the pair of men's underwear from the bedroom. Judith Macechko, a forensic scientist at the Crime Lab, collected samples from the underwear to determine whether the wearer's skin cells, from which DNA could be extracted, were deposited on the underwear.

An analysis of the skin cells collected from the underwear resulted in a DNA profile "consistent with a single source of unknown male." (Tr. 375). Thus, a DNA analyst with the Crime Lab entered the DNA profile into the Indiana State Police Laboratory's DNA database, referred to as CODIS,[3] which contains a number of DNA profiles. The DNA profile obtained from the underwear samples matched Johnson's DNA profile contained in CODIS. A blood test later confirmed the match.

After confirming that Johnson's DNA was on the underwear found in Handlon's bedroom, Detective Kennedy conducted an interview with Johnson on December 21, 2005. Initially, Johnson told Detective Kennedy that the only time he went to the women's apartment on July 29, 2003 was to bring them a stereo. Johnson denied leaving a pair of his underwear in the apartment. After further questioning, however, Johnson admitted that he went to the women's apartment to return some hot sauce. Johnson later acknowledged that he may have gone to the women's apartment to try and have sex with Handlon, but "she didn't give [him] none [sic] . . . ." (Ex. Vol. II, p. 133). Johnson denied entering Handlon's apartment through the front window, asserting that Handlon let him in her apartment, but acknowledged that he had crawled through his own window

[3] CODIS is an acronym for the Federal Bureau of Investigations Combined DNA Indexing System.

and onto the porch roof in the past. Johnson admitted to going into Handlon's bedroom, where he took his pants off to "show her [his] thing . . . ." *Id.* Johnson told Detective Kennedy that he left the apartment because Handlon "didn't want to do nothin' . . . ." (Ex. Vol. II, p. 137). According to Johnson, Handlon told him to "'just go ahead and leave,'" which he did; Johnson stated that he locked the door to the apartment as he left. (Ex. Vol. II, p. 146). Johnson stated that he must have forgotten to put his underwear back on before he left the apartment because he "was high." (Ex. Vol. II, p. 144). Also during the interview, Johnson admitted to having carried box cutters during the summer of 2003. Johnson, however, denied touching Handlon.

Dr. Dean Hawley, a forensic pathologist with the Indiana University School of Medicine, performed the autopsy on Handlon. The autopsy revealed that Handlon "died as a result of stab wounds of the neck, chest and her extremities." (Tr. 248). Dr. Hawley "found fourteen stab wounds" and determined that the stab wounds "could all have been made with the same instrument." (Tr. 254). Dr. Hawley determined that the deepest stab wound was "four and a half inches deep," but the blade which made the wound "could [have] be[en] shorter than that," depending on the force with which instrument struck the skin. (Tr. 255). Dr. Hawley opined that "a lot of force was used," given that one of Handlon's ribs was "cut completely through by" a blade. (Tr. 256). Dr. Hawley concluded that the blade, which made Handlon's injuries, was "characteristic[] of a knife blade as opposed to a fragment of glass or a pair of scissors"; was "at least three and a half or four inches long"; and sharpened on at least one side. (Tr. 257-58). Dr. Hawley

characterized the instrument as "a sharp but durable cutting instrument capable of going through the bone." (Tr. 258).

Dr. Hawley did not find "injuries of forcible sexual assault . . . ." (Tr. 271). Dr. Hawley also swabbed Handlon's mouth, vagina and anus for evidence. The swabs tested negative for seminal material or spermatozoa.

On December 22, 2005, the State charged Johnson with murder. A jury trial commenced on October 2, 2006. During trial, Roberta Sue Sharp, Johnson's ex-girlfriend, testified that she lived in the Villa Avenue apartment with Johnson from March of 2002 until early July of 2003. Sharp testified that during this time, Johnson worked in the maintenance and housekeeping department of a department store. Sharp testified that one of the items Johnson carried and used for work was a box cutter, approximately "four to six inches" in length. (Tr. 279). As to the length of the blade, Sharp testified that "[f]ully extended it could have been as long as the box cutter, two to four inches, maybe longer" but "[a]t least two" inches. (Tr. 280). Sharp also testified that Johnson often had trouble achieving or maintaining an erection and would get "[d]isgusted" when this occurred. (Tr. 281).

On October 4, 2006, the jury found Johnson guilty of felony murder. The trial court ordered a pre-sentence investigation report ("PSI"). The PSI indicated that Johnson was convicted of burglary and possession of paraphernalia in 2000 and sentenced to the Department of Correction and probation. Johnson violated his probation in 2004 when he was arrested for criminal confinement, battery, domestic battery and resisting law enforcement. Johnson was convicted of criminal confinement, as a class D felony, and

battery, as a class A misdemeanor. Johnson was released to probation in June of 2005. Johnson's probation was revoked for failure to comply with the conditions of his probation.

The trial court held a sentencing hearing on October 18, 2006. Johnson did not proffer, and the trial court did not find, any mitigating circumstances. The trial court found Johnson's prior criminal history to be an aggravating circumstance and sentenced Johnson to sixty-five years in the Department of Correction.

DECISION

1. Sufficiency of the Evidence

Johnson asserts the evidence is insufficient to support his conviction because "[t]he State's case was based almost exclusively on weak circumstantial evidence." Johnson's Br. 9.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted). We will sustain a judgment based on circumstantial evidence alone if the circumstantial

evidence supports a reasonable inference of guilt. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*.

Here, the record reveals that Johnson and Handlon lived in adjoining apartments, with a front porch roof spanning the width of both apartments, from which the apartments could be accessed. The record also reveals that Johnson was the last person seen with Handlon. Furthermore, officers discovered underwear in Handlon's bedroom and later traced that underwear to Johnson. Although Johnson initially denied knowledge of the underwear and having gone to Handlon's apartment, he later admitted to having gone to her apartment, hoping to have sex with her. Johnson further admitted to having left his underwear in the apartment. The record also reveals that Handlon died from multiple stab wounds, made with a knife blade consistent with that used for box cutters. Johnson admitted to having carried a box cutter at the time Handlon was murdered, and Sparks testified that she had seen Johnson carrying a box cutter during this time. Furthermore, Johnson stated that he could access the porch roof from his apartment, and the State presented evidence that the screen covering Handlon's window had been torn. Given these facts, we find that the State presented sufficient evidence that Johnson murdered Handlon.

2. Sentence

Johnson asserts that his sentence is inappropriate.[4] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender.

[4] When Johnson committed his offense, Indiana Code section 35-5-2-3 provided that "[a] person who commits murder shall be imprisoned for a fixed term of fifty-five (55) years, with not more than then (10)

Ind. Appellate Rule 7(B); *Ruiz v. State*, 818 N.E.2d 927, 928 (Ind. 2004). "When considering the appropriateness of the sentence for the crime committed, the sentencing court should focus initially on the presumptive sentence." *Rose v. State*, 810 N.E.2d 361, 368 (Ind. Ct. App. 2004). The court may deviate from the presumptive sentence based on general sentencing considerations contained in Indiana Code section 35-38-1-7.1, as well as aggravating and mitigating circumstances. *Id.* "In general, the maximum possible sentences should be reserved for the worst offenders and offenses." *Newsome v. State*, 797 N.E.2d 293, 302 (Ind. Ct. App. 2003), *trans. denied*.

Our review of the nature of the offense reveals that Johnson brutally stabbed Handlon, a woman he had befriended, multiple times. As to Johnson's character, Johnson has prior convictions and probation violations, indicating no deterrence from criminal activity. Based upon all of the above, we find that both the nature of the offense and the character of the offender support an enhanced sentence.

Affirmed.

MAY, J., and CRONE, J., concur.

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years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances . . . ." Subsequent to the date of Johnson's offense and prior to his sentencing, the legislature amended Indiana Code section 35-50-2-3 to provide for "a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years." *See* P.L. 71-2005, § 7 (eff. Apr. 25, 2005).